

1 BOIES SCHILLER FLEXNER LLP
 2 RICHARD J. POCKER (NV Bar No. 3568)
 3 300 South Fourth Street, Suite 800
 4 Las Vegas, NV 89101
 Telephone: 702.382.7300
 Facsimile: 702.382.2755
 rpocker@bsflp.com

5 BOIES SCHILLER FLEXNER LLP
 6 WILLIAM ISAACSON (*pro hac vice*)
 7 KAREN DUNN (*pro hac vice*)
 8 1401 New York Avenue, NW, 11th Floor
 Washington, DC 20005
 Telephone: 202.237.2727
 Facsimile: 202.237.6131
 wisaacson@bsflp.com
 kdunn@bsflp.com

9 BOIES SCHILLER FLEXNER LLP
 10 STEVEN C. HOLTZMAN (*pro hac vice*)
 11 KATHLEEN R. HARTNETT (*pro hac vice*)
 12 BEKO O. REBLITZ-RICHARDSON
 (*pro hac vice*)
 13 1999 Harrison Street, Suite 900
 Oakland, CA 94612
 Telephone: 510.874.1000
 Facsimile: 510.874.1460
 sholtzman@bsflp.com
 khartnett@bsflp.com
 brichardson@bsflp.com

MORGAN, LEWIS & BOCKIUS LLP
 BENJAMIN P. SMITH (*pro hac vice*)
 JOHN A. POLITICO (*pro hac vice*)
 SHARON R. SMITH (*pro hac vice*)
 FRANK KENNAMER (*pro hac vice*)
 One Market, Spear Street Tower
 San Francisco, CA 94105
 Telephone: 415.442.1000
 Facsimile: 415.442.1001
 benjamin.smith@morganlewis.com
 john.polito@morganlewis.com
 sharon.smith@morganlewis.com
 frank.kennamer@morganlewis.com

DORIAN DALEY (*pro hac vice*)
 DEBORAH K. MILLER (*pro hac vice*)
 JAMES C. MAROULIS (*pro hac vice*)
 ORACLE CORPORATION
 500 Oracle Parkway, M/S 5op7
 Redwood City, CA 94070
 Telephone: 650.506.4846
 Facsimile: 650.506.7114
 dorian.daley@oracle.com
 deborah.miller@oracle.com
 jim.maroulis@oracle.com

Attorneys for Defendants and Counterclaimants Oracle America, Inc. and Oracle International Corp.

16 UNITED STATES DISTRICT COURT
 17 DISTRICT OF NEVADA

18 RIMINI STREET, INC., a Nevada corporation,
 Plaintiff,

19 v.

20 ORACLE AMERICA, INC., a Delaware
 21 corporation; and ORACLE INTERNATIONAL
 22 CORPORATION, a California corporation,
 Defendants.

23 ORACLE AMERICA, INC., a Delaware
 24 corporation; and ORACLE INTERNATIONAL
 CORPORATION, a California corporation,
 Counterclaimants,

25 v.

26 RIMINI STREET, INC., a Nevada corporation;
 SETH RAVIN, an individual,
 Counterdefendants.

Case No. 2:14-cv-01699 LRH CWH

**ORACLE'S MOTION FOR
 SUMMARY JUDGMENT AND
 PARTIAL SUMMARY JUDGMENT
 AND SUPPORTING MEMORANDUM
 OF POINTS AND AUTHORITIES
 REGARDING ORACLE'S CEASE-
 AND-DESIST LETTER**

Judge: Hon. Larry R. Hicks

REDACTED

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF UNDISPUTED FACTS (LR 56-1).....	3
A.	No Agreement Grants Rimini The Rights It Asserted In Opposition To Oracle's Motion to Dismiss.....	3
1.	Oracle Software License Agreements [REDACTED]	3
2.	[REDACTED]	4
3.	Oracle Support Websites' Terms Of Use Confirm Oracle's Right To Control Access To Its Support Websites.....	5
B.	Rimini Street Has Engaged In Massive And Harmful Access to And Downloading From Oracle's Support Websites.....	6
C.	In January 2017, Oracle Put Rimini on Notice That Rimini's Continued Access To Oracle's Websites Would Be Unauthorized.....	8
D.	Oracle Licensees Enjoy Uninterrupted Access.....	8
E.	Rimini Is Unable to Identify Any Right To Access Oracle's Support Websites.....	9
F.	Rimini Can Identify No Harm Or Damages Caused By The Letter.....	10
III.	LEGAL STANDARD.....	14
IV.	ORACLE IS ENTITLED TO SUMMARY JUDGMENT ON RIMINI'S DECLARATORY RELIEF CLAIM CONCERNING THE LETTER	15
V.	THE SAME UNDISPUTED FACTS DISPOSING OF COUNT II ENTITLE ORACLE TO PARTIAL SUMMARY JUDGMENT ON RIMINI'S UNFAIR COMPETITION AND INTENTIONAL INTERFERENCE CLAIMS TO THE EXTENT THEY ARE BASED ON THE LETTER.....	18
A.	The UCL Permits Oracle To Exercise Its Statutory Rights Without Liability.....	18
B.	The Letter Also Cannot Constitute "Wrongful" Or "Improper" Interference.....	19
VI.	ADDITIONAL, INDEPENDENT REASONS REQUIRE SUMMARY JUDGMENT FOR ORACLE ON RIMINI'S LETTER-BASED CLAIM FOR INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS.....	21
A.	Rimini Cannot Prove That It Was Contractually Obligated To Access And Download Materials From Oracle Websites.....	22
B.	Rimini Cannot Prove That Oracle's Letter Caused Disruption.....	23
C.	Rimini Cannot Identify Cognizable Harm Or Damage.....	25
VII.	SUMMARY JUDGMENT FOR ORACLE IS INDEPENDENTLY REQUIRED ON RIMINI'S UCL CLAIM BASED ON THE LETTER.....	25
VIII.	CONCLUSION.....	26

TABLE OF AUTHORITIES

Cases

3	<i>AirHawk Int'l, LLC v. TheRealCraigJ, LLC</i> , 2016 WL 9584008 (C.D. Cal. Aug. 1, 2016).....	22
4		
5	<i>Alvarez v. Chevron Corp.</i> , 656 F.3d 925 (9th Cir. 2011)	19
6		
7	<i>Arkley v. Aon Risk Servs. Companies, Inc.</i> , 2012 WL 12885707 (C.D. Cal. June 13, 2012)	23
8		
9	<i>Berman v. Dean Witter & Co.</i> , 44 Cal. App. 3d 999 (1975)	18
10		
11	<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	17
12		
13	<i>Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.</i> , 20 Cal. 4th 163 (1999)	19
14		
15	<i>Chavez v. Whirlpool Corp.</i> , 93 Cal. App. 4th 363 (2001)	19
16		
17	<i>Davis v. HSBC Bank Nevada, N.A.</i> , 691 F.3d 1152 (9th Cir. 2012)	19
18		
19	<i>Doe I v. Wal-Mart Stores, Inc.</i> , 572 F.3d 677 (9th Cir. 2009)	26
20		
21	<i>Dryden v. Tri-Valley Growers</i> , 65 Cal. App. 3d 990 (Ct. App. 1977).....	20
22		
23	<i>Express, LLC v. Fetish Grp., Inc.</i> , 464 F. Supp. 2d 965 (C.D. Cal. 2006)	26
24		
25	<i>Facebook v. Power Ventures, Inc.</i> , 844 F.3d 1058 (9th Cir. 2016)	passim
26		
27	<i>Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.</i> , 525 F.3d 822 (9th Cir. 2008)	21, 25
28		
29	<i>Fitbug Ltd. v. Fitbit, Inc.</i> , 78 F. Supp. 3d 1180 (N.D. Cal. 2015)	26
30		
31	<i>Holper v. Ace Am. Ins. Co.</i> , 2014 WL 2960296 (D. Nev. June 27, 2014).....	15
32		
33	<i>Home Gambling Network, Inc. v. Piche</i> , 2013 WL 5492568 (D. Nev. Sept. 30, 2013)	23
34		
35	<i>Indep. Cellular Tel., Inc. v. Daniels & Assocs.</i> , 863 F. Supp. 1109 (N.D. Cal. 1994)	15
36		

1	<i>Intel v. Hamidi</i> , 30 Cal.4th 1342 (2003)	21
2	<i>J.J. Indus., LLC v. Bennett</i> , 119 Nev. 269 (2003)	21
4	<i>Jane Doe I v. Wal-Mart Stores, Inc.</i> , 2007 WL 5975664 (C.D. Cal. Mar. 30, 2007).....	26
5	<i>Lake at Las Vegas Inv'rs Grp., Inc. v. Pac. Malibu Dev. Corp.</i> , 867 F. Supp. 920 (D. Nev. 1994).....	15
7	<i>Linares v. CitiMortgage, Inc.</i> , No. C-14-3435 EMC, 2015 WL 2088705 (N.D. Cal. May 5, 2015)	26
8	<i>LucasArts Entm't Co. v. Humongous Entm't Co.</i> , 870 F. Supp. 285 WL 760205 (N.D. Cal. 1993).....	22, 24
10	<i>Methodist Hosp. of S. California v. Blue Cross of California</i> , 2010 WL 11508022 (C.D. Cal. Feb. 26, 2010).....	23
11	<i>Milton H. Greene Archives, Inc. v. CMG Worldwide, Inc.</i> , 2008 WL 11334030 (C.D. Cal. Mar. 17, 2008).....	22
13	<i>Montgomery v. eTreppid Techs., LLC</i> , No. 2008 WL 11401776 (D. Nev. July 2, 2008).....	22
14	<i>Mossimo Holdings, LLC v. Haralambus</i> , 2017 WL 1240739, (C.D. Cal. Apr. 4, 2017)	24
16	<i>Neal v. Select Portfolio Servicing, Inc.</i> , 2017 WL 4224871 (N.D. Cal. Sept. 22, 2017)	20
17	<i>O'Brien v. Morgan Stanley DW, Inc.</i> , 2008 WL 4224409 (D. Nev. Sept. 10, 2008).....	22
19	<i>Olszewski v. ScrippsHealth</i> , 107 Cal. Rptr. 2d 187 (Cal. App. 2001).....	19, 21
20	<i>Operation: Heroes, Ltd. v. Procter & Gamble Prods., Inc.</i> , 2015 WL 5768534 (D. Nev. Sept. 29, 2015)	23
22	<i>Oracle USA, Inc. v. Rimini St., Inc.</i> No. 2:10-CV-00106-LRH-PAL (D. Nev. Oct. 29, 2010)	5
23	<i>Oracle USA, Inc. v. Rimini Street, Inc.</i> , 879 F.3d 948 (9th Cir. 2018)	8
25	<i>Pac. Gas & Elec. Co. v. Bear Stearns & Co.</i> , 50 Cal. 3d 1118 (1990)	24
26	<i>Prappas v. Meyerland Cnty. Imp. Ass'n</i> , 795 S.W.2d 794 (Tex. App. 1990).....	20, 21
28		

1	<i>Register.com v. Verio, Inc.</i> , 356 F.3d 393 (2d Cir. 2004).....	21
2	<i>Sebastian Int'l, Inc. v. Russolillo</i> , No. CV 00-3476 SVW JWJX, 2005 WL 1323127 (C.D. Cal. Feb. 22, 2005)	25
4	<i>Stereoscope, LLC v. U.S. Bank Nat'l Ass'n</i> , 675 F. App'x 725 (9th Cir. 2017)	24
5	<i>Swim v. Wilson</i> , 90 Cal. 126 (1891)	18
7	<i>Ticketmaster L.L.C. v. Prestige Entm't W., Inc.</i> , 315 F. Supp. 3d 1147 (C.D. Cal. 2018)	15
9	<i>United of Omaha Life Ins. Co.</i> , 225 F.3d 1042 (9th Cir. 2000)	19
10	<u>Statutes, Rules & Other Authorities</u>	
11	18 U.S.C. § 1030.....	15, 21
12	44B Am. Jur. 2d <i>Interference</i> § 22	20
13	Cal. Bus. & Prof. Code § 17200	19
14	Cal. Bus. & Prof. Code § 17204	26
15	California Penal Code § 502	15, 21
16	Fed. R. Civ. P. 30.....	9
17	Fed. R. Civ. P. 56.....	14, 15, 17
18	N.R.S. § 205.4765.....	15, 21
19	N.R.S. § 205.511.....	21
20	Restatement (Second) Of Torts § 766.....	22
21	Restatement (Third) Of Agency § 7.01.....	18

1 Oracle International Corporation and Oracle America, Inc. (“Oracle”) respectfully move
 2 this Court to grant Oracle summary judgment on Rimini Street, Inc.’s (“Rimini”) second claim for
 3 relief and partial summary judgment on Rimini’s fourth and eighth claims for relief. This motion
 4 is based on the matters and argument contained herein, the supporting declarations and exhibits
 5 thereto, the entire record in this action, and such other matters as may be presented to the Court.

6 **I. INTRODUCTION**

7 On January 17, 2017, Oracle sent Rimini a letter providing 60 days’ notice that Rimini
 8 was to cease and desist accessing Oracle’s support websites (“the Letter”). The Letter warned
 9 Rimini that further access would violate certain computer-protection statutes. Rimini has since
 10 pled claims in this lawsuit against Oracle based on the Letter. Through this motion, Oracle seeks
 11 summary judgment against Rimini on its claims to the extent they are based on the Letter.

12 Oracle’s cease and desist Letter to Rimini followed a procedure the Ninth Circuit endorsed
 13 for protecting computer systems in *Facebook v. Power Ventures, Inc.*, 844 F.3d 1058, 1067 (9th
 14 Cir. 2016), *as amended on denial of rehearing en banc* (Dec. 9, 2016). Under *Facebook*, Rimini
 15 faces statutory liability if it accesses Oracle’s support websites now that 60 days have passed
 16 because Oracle’s letter provided clear notice that Rimini is not authorized to access those websites.
 17 As Oracle explained in its Letter, with detailed support, “Rimini’s downloading is staggering in
 18 its scope,” “exceeds many of its customers’ reasonably expected uses,” and “does not comport
 19 with the licenses and terms of use under which Rimini is ostensibly operating.” Oracle also cited
 20 Rimini’s “proven infringement” and that Rimini “continues to infringe Oracle’s copyrights.”

21 In Count II of its operative complaint (the Third Amended Complaint or “TAC”), Rimini
 22 seeks a declaration from this Court that Oracle’s Letter is a legal nullity, and that Rimini may
 23 access Oracle’s support websites without liability under the Federal Computer Fraud and Abuse
 24 Act (“CFAA”), the California Computer Data Access and Fraud Act (“CDAFA”), or the Nevada
 25 Computer Crimes Law (“NCCL”), so long as Rimini purports to act on behalf of its customers.
 26 In Counts IV and VIII, Rimini asserts, respectively, that the Letter renders Oracle liable for
 27 intentionally interfering with Rimini’s contractual relations and under the California Unfair
 28

1 Competition Law (the “UCL”). Oracle now seeks summary judgment as to Rimini’s Count II
 2 and partial summary judgment as to Rimini’s Counts IV and VIII as they relate to the Letter.

3 ***First***, Oracle is entitled to summary judgment on Rimini’s Count II for declaratory relief
 4 because the Letter can be a basis for claims by Oracle under computer access statutes. At the
 5 pleading stage, the Court declined to dismiss Count II because Rimini “specifically pled that
 6 Oracle’s software licenses specifically grant the licensee ‘the right to access, download, and use
 7 the bug fixes, patches, and updates that Oracle makes available’ on its support websites” and
 8 “further alleged that the software licenses specifically allow the licensee to appoint an agent to
 9 access the support websites and execute downloads on the licensees’ behalf.” ECF No. 633 at
 10 8:23–9:3. The Court noted “the limited record and argument before the court” as well as the
 11 “parties’ minimal briefing on this issue” at the motion to dismiss stage, and stated that “further
 12 development of this claim – including the actual language of Oracle’s software licenses and the
 13 extent of the licensee’s authorization to Rimini Street – is necessary to properly evaluate this
 14 claim.” *Id.* at 8:10, 9:5–9. That further development has occurred. Following discovery, there
 15 is ***no*** evidence that [REDACTED]. No
 16 one—and certainly not Rimini—has an irrevocable right to access Oracle’s support websites. The
 17 Letter was consistent with Oracle’s contractual rights and followed the process set forth by the
 18 Ninth Circuit in *Facebook*. Any further access by Rimini of Oracle’s support websites thus would
 19 violate the CFAA, the CDAFA, the NCCL, and other law.

20 ***Second***, the same reasoning supports Oracle’s motion for partial summary judgment on
 21 Rimini’s intentional interference (Count IV) and UCL (Count VIII) claims to the extent they are
 22 based the Letter. Oracle has the legal right to control access to its support websites, including
 23 under state and federal computer access statutes. It can be neither improper nor unfair for Oracle
 24 to exercise that legal right, including as set forth in *Facebook*. Rimini’s self-serving notion of
 25 “fairness” cannot override Oracle’s rights under state and federal computer access laws. The
 26 UCL and the common law prevent Rimini from asserting these claims based on the Letter.

27 ***Third***, partial summary judgment for Oracle on the intentional interference and UCL
 28

1 claims (to the extent they are based on the Letter) is separately and independently appropriate
 2 because Rimini cannot establish critical elements of either claim. [REDACTED]
 3 [REDACTED]
 4 [REDACTED]

5 [REDACTED], and Rimini is unable to prove that Oracle's conduct caused any disruption of that
 6 obligation. Moreover, Rimini cannot prove (among other things) that the Letter caused any
 7 cognizable harm. In fact, Rimini admits that [REDACTED]
 8 [REDACTED].

9 Because Oracle acted lawfully in issuing the Letter, as shown by undisputed facts,
 10 summary judgment should be entered for Oracle on Rimini's Letter-based claims.

11 II. STATEMENT OF UNDISPUTED FACTS (LR 56-1)

12 A. No Agreement Grants Rimini The Rights It Asserted In Opposition To 13 Oracle's Motion to Dismiss.

14 1. Oracle Software License Agreements [REDACTED]

15 1. Oracle customers purchase software licenses which grant them limited rights to
 16 copy and use specific Oracle software programs. Oracle's Corrected Third Amended
 17 Counterclaim ("Oracle TAC"), ECF No. 584¹, ¶ 37; Rimini's Operative Answer, ECF No. 414
 18 ("Answer") ("The allegations in paragraph 37 are admitted"); *see also* Declaration Of Sean P.
 19 Rodriguez In Support Of Oracle's Motion For Summary Judgment And Partial Summary
 20 Judgment And Supporting Memorandum Of Points And Authorities Regarding Oracle's Cease-
 21 and-Desist Letter ("Rodriguez Decl.") Ex. 1 at 4 (defining "Oracle Software Licensee" as "an
 22 entity that has entered into an agreement with Oracle that licenses and sets forth the other terms
 23 and conditions by which such entity obtains rights to use [Oracle] Software, including the right
 24

25 ¹ Pursuant to this Court's order (ECF No. 591), Oracle's Corrected Third Amended Counterclaims
 26 (ECF No. 584) replaced Oracle's Third Amended Counterclaims (ECF No. 399). The Parties
 27 agreed (as reflected in ECF No. 591) to treat Rimini's previously filed answer (ECF No. 410) as
 responsive to Oracle's Corrected Third Amended Counterclaims (ECF No. 584). The unredacted
 version of ECF No. 410 (Rimini's operative answer) is ECF No. 414.

1 to engage independent service providers in connection with such rights”).

2. Oracle’s standard license agreements [REDACTED]

[REDACTED]

[REDACTED]. Rodriguez Decl. Ex. 2 at 175:13–20 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.

[REDACTED]

3.

[REDACTED] Rodriguez Decl. Ex. 3 at 48:11–49:23.

4.

[REDACTED]

[REDACTED]. *Id.* at 48:11–49:5.

5.

[REDACTED]

[REDACTED] *Id.* at 51:9–17; 59:12–22.

6. For example, Oracle’s Software Technical Support Policies from March 2014 state that they “are subject to change at Oracle’s discretion.” Rodriguez Decl. Ex. 4 at 1; *see also* Rodriguez Decl. Ex. 3 at 51:9–17.

7. The 2014 Software Technical Support Policies reference My Oracle Support, stating: “Access to My Oracle Support is governed by the Terms of Use posted on the My Oracle Support web site. The Terms of Use are subject to change and a copy of these terms is available upon request. Access to My Oracle Support is limited to your designated technical contacts.” Rodriguez Decl. Ex. 4 at 20.

8. Oracle’s 2014 Software Technical Support Policies define “You” and “Your” as “the individual or entity that has ordered technical support from Oracle” and states “Your technical contacts are the sole liaisons between you and OSS for technical support services” and

1 “you must notify OSS whenever technical contact responsibilities are transferred to another
2 individual.” *Id.* at 1, 4.

3 9. These are not recent developments. There are [REDACTED]
4 [REDACTED]
5 [REDACTED]” and that [REDACTED]
6 [REDACTED]
7 [REDACTED] Rodriguez Decl. Ex. 5 at -187; -192–93; Rodriguez
8 Decl. Ex. 2 at 182:12–15; *see also* Rodriguez Decl. Ex. 6 at -467; -472–73 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] Rodriguez Ex. 2 at 104:11–18.²

13 3. **Oracle Support Websites’ Terms Of Use Confirm Oracle’s Right To
14 Control Access To Its Support Websites.**

15 10. To receive access credentials to Oracle’s support websites, a user must agree to
16 the Terms of Use (“TOU”), and every time a user accesses the site there is a link to the TOU that
17 explains that website usage is subject to the TOU. Trial Tr. at 863:19–864:8, *Oracle USA, Inc.*
18 *v. Rimini St., Inc.*, No. 2:10-CV-00106-LRH-PAL (D. Nev. Oct. 29, 2010) (“*Rimini I*”), ECF No.
19 794; *see also* Oracle TAC, ECF No. 584, ¶¶ 41–42; Answer, ECF No. 414, ¶ 41 (“Admitted that
20 Oracle’s Terms of Use contain certain restrictions regarding access to Oracle’s technical support
21 websites.”); *see also* Rodriguez Decl. Ex. 7 at 6 (“By using the Oracle Web sites, you agree to
22 these Terms of Use.”); Rodriguez Decl. Ex. 8 (the Letter) at 39:18–40:5; ECF No. 397-1 (same).

23 11. Oracle.com’s TOU state that “Oracle reserves the right to terminate the
24 permissions granted” to those accessing” the Oracle websites “at any time.” Rodriguez Decl. Ex.

25 _____
26 ² The names of Oracle support websites have changed throughout the years. “Customer
27 Connection” was the name of the PeopleSoft online support website that was a predecessor to My
Oracle Support, “which provides support for all of the Oracle software.” Trial Tr. at 864:9–24,
Rimini I, ECF No. 794.

1 7 at 6 ¶ 5.

2 12. Oracle.com's TOU state: "Oracle may, in its sole discretion, at any time
3 discontinue providing or limit access to the Site, any areas of the Site or Content provided on or
4 through the Site. You agree that Oracle may, in its sole discretion, at any time, terminate or limit
5 your access to, or use of, the Site or any Content." Rodriguez Decl. Ex. 7 at 7 ¶ 11.³

6 13. My Oracle Support is Oracle's "general portal to support" and by 2015 provided
7 "support for all of the Oracle software." Rodriguez Decl. Ex. 3 at 58:17–59:6; Trial Tr. at 864:9–
8 865:12, *Rimini I*, ECF 794; *see also* Rodriguez Decl. Ex. 9 at 109:17–24 (My Oracle Support
9 "portal is the location where Oracle stores software, patches and fixes, tax and regulatory updates,
10 security patches, localizations, language patches").

11 14. The My Oracle Support TOU state "Oracle retains the right to revoke access to the
12 Materials at any time for any reason."⁴ Rodriguez Decl. Ex. 7 at 13.

13 **B. Rimini Street Has Engaged In Massive And Harmful Access to And
14 Downloading From Oracle's Support Websites.**

15 15. Rimini has a [REDACTED] Rodriguez Decl. Ex. 8 at 30:9–
16 25.

17 16. Rimini admits it "engages in substantially more downloading activity than the
18 average Oracle customer accessing the Oracle Websites." Rimini TAC, ECF No. 489, ¶ 70; *see*
19 *also* ECF No. 461 at 5:15–19 (Rimini brief stating it "should not be surprising that Rimini . . .
20 would be the largest downloader of Oracle support materials."); Answer, ECF No. 414 at 21:8–

21 ³ My Oracle Support's TOU have been "largely the same as they were for Customer Connection." Trial Tr. at 864:23–24, *Rimini I*, ECF No. 794. For example, like the current My Oracle Support TOU, [REDACTED]

22 [REDACTED] *Compare* Rodriguez Decl. Ex. 10 at -480, *with* Rodriguez Decl. Ex. 7 at 11–14.

23 ⁴ My Oracle Support TOU define "Materials" to mean: "various programs, software and web-based tools, and other materials made available by Oracle now and in the future, including but not limited to bulletins, white papers, and other technical publications; information on product certification, product availability, and product desupport; any bug database; service requests that you have submitted; software patches; bulletin board and forum messages; and hyperlinks to web sites not controlled by Oracle." Rodriguez Decl. Ex. 7 at 11.

1 15; Rodriguez Decl. Ex. 11 at -605 (Rimini executive wrote: [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 17. Rimini executive Nancy Lyskawa admitted during her 30(b)(6) deposition that
5 [REDACTED]

6 [REDACTED] Rodriguez Decl. Ex. 9 at 129:6–8.
7

8 18. In internal emails, Rimini employees referred to [REDACTED] Rodriguez Decl. Ex. 11 at -603
9 (Rimini executive wrote: [REDACTED]
10 [REDACTED].

11 19. Rimini’s TAC admits Rimini has had a practice of downloading “comprehensive”
12 sets of Oracle files and a “broad scope of materials (including files for different software
13 platforms and files in different languages).” Rimini TAC, ECF No. 489, ¶ 70.

14 20. Rimini’s [REDACTED]
15 [REDACTED]
16 [REDACTED] Rodriguez Decl. Ex. 8 at
17 77:16–79:6; 114:5–115:6.

18 21. For example, users associated with the riministreet.com email domain were
19 responsible for more than half of all download-part requests from Oracle’s support websites in
20 2015 and more than 70% in 2016. Rodriguez Decl. Ex. 7 at 2–3; Rodriguez Decl. Ex. 8 at 79:11–
21 80:18, 118:20–120:24.

22 22. In evidence presented to the jury in *Rimini I*, including Rimini CEO Seth Ravin’s
23 own testimony and internal Rimini emails, Rimini executives and employees discussed helping
24 themselves to “the buffet” of copyrighted materials available to licensees on Oracle’s websites,
25 “making a crap load of money from [Oracle’s] free stuff” that Rimini downloaded, and becoming
26 worried when Oracle was “onto us from massive download volumes.” Trial Tr. at 272:16–25,
27 *Rimini I*, ECF No. 790; Trial Tr. at 508:5–13; 547:1–16, *Rimini I*, ECF No. 792.
28

1 23. Mr. Ravin directed Rimini employees to “keep downloading” Oracle software for
 2 its files and admitted under oath that he personally made “the decision to continue to use”
 3 automated downloading tools despite knowing that Oracle had changed its Terms of Use to
 4 prohibit that practice. Trial Tr. at 273:1–13, *Rimini I*, ECF No. 790; *id.* at 482:15–483:15; *see*
 5 *also* Rimini TAC, ECF No. 489, ¶ 13.⁵

6 **C. In January 2017, Oracle Put Rimini on Notice That Rimini’s Continued**
 7 **Access To Oracle’s Websites Would Be Unauthorized.**

8 24. On January 17, 2017, Oracle sent the Letter to Rimini, which alerted Rimini that
 9 any access of Oracle websites after the expiration of 60 days (March 17, 2017) by any “Rimini
 10 employee, contractor, or executive” would be unauthorized and should be deemed unlawful.
 11 Rodriguez Decl. Ex. 7 at 1–4.

12 25. The Letter cited the December 9, 2016 Ninth Circuit *Facebook* decision and the
 13 express termination provisions under Oracle’s Terms of Use. *Id.* at 3–4; *see also id.* at 15–37.

14 **D. Oracle Licensees Enjoy Uninterrupted Access.**

15 26. The Letter does not preclude any Oracle licensee with an active Oracle support
 16 agreement from accessing Oracle’s support sites. ECF No. 414 at 21 (“Oracle’s letter and
 17 counterclaims do not claim that Rimini’s clients would not be able to download the same software
 18 that Rimini has downloaded”); ECF No. 461 at 6 (Oracle licensees have the option of “creating
 19 their own archive”); Rodriguez Decl. Ex. 9 at 42:11–12 (after Oracle revoked Rimini’s access,
 20 [REDACTED]

21 27. Oracle explained in the Letter that if an Oracle “licensee believes it needs access
 22 to My Oracle Support after the 60th day from today and the customer’s maintenance end date on
 23

24 ⁵ This Court and the jury in *Rimini I* found that Rimini and Mr. Ravin willfully and without
 25 authorization downloaded materials from Oracle’s websites. Order at 2–3, *Rimini I*, ECF No. 1164.
 26 When the Ninth Circuit overturned the *Rimini I* downloading claim judgment it rested solely on
 27 its interpretation of the relevant statutes, never questioning the underlying factual findings. *Id.*
 28 (explaining that the panel decision turned on its legal conclusion that the *method* Rimini used did
 not violate the California or Nevada downloading statutes); *see also Oracle USA, Inc. v. Rimini
 Street, Inc.*, 879 F.3d 948 (9th Cir. 2018).

1 its Oracle support would otherwise have expired by that date, that licensee may contact Oracle,”
2 which would consider whether “to extend that customer’s access to My Oracle Support for some
3 further period of time, or to provide other assistance to the customer.” Rodriguez Decl. Ex. 7 at
4 4.

5 28. [REDACTED]

6 [REDACTED] Rodriguez Decl. Ex. 8 at 29:23–30:8.

7 **E. Rimini Is Unable to Identify Any Right To Access Oracle’s Support Websites.**

8 29. Rimini designated Nancy Lyskawa, senior vice president of Rimini’s global client
9 onboarding, as its Rimini’s 30(b)(6) representative to discuss *inter alia* Rimini’s [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] Rodriguez Decl. Ex.

13 12; Rodriguez Decl. Ex. 9 at 29:7–20; *id.* at 118:23–119:3.

14 30. During her 30(b)(6) deposition, Ms. Lyskawa acknowledged [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] *Id.* at 109:25–110:13; *id.* at 111:6–21 (same).

18 31. Ms. Lyskawa testified that [REDACTED]
19 *Id.* at 111:23–112:9.

20 32. Ms. Lyskawa stated that [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] *Id.* at 132:12–133:17.

24 33. Ms. Lyskawa [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED] *Id.* at 108:16–109:5 [REDACTED]
28

1 [REDACTED]
2 [REDACTED]); *id.* at 112:10–19 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 **F. Rimini Can Identify No Harm Or Damages Caused By The Letter.**

6 34. Rimini admits that [REDACTED]

7 [REDACTED]
8 [REDACTED]. *Id.* at 246:23–247:5 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] *id.* at 247:6–13 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]; *id.* at 247:14–18 [REDACTED]
15 [REDACTED]
16 [REDACTED].⁶

17 35. Rimini has admitted that [REDACTED]

18 Rodriguez Decl. Ex. 11 at -605 [REDACTED]

19 [REDACTED] Rodriguez Decl. Ex. 9 at 218:13–16 [REDACTED]
20 [REDACTED] *id.* at 162:3–25 [REDACTED]

21 [REDACTED]
22 36. Rimini “continues to advise its clients on the recommended scope of archives”

23 [REDACTED] Rodriguez Decl. Ex. 1 at 13:1–3
24 (admission that Rimini “continues to advise its clients on the recommended scope of archives”);

25 _____
26 ⁶ Ms. Lyskawa testified in her April 19, 2018 deposition (at the conclusion of discovery) that she
27 [REDACTED] Rodriguez Decl. Ex. 20 at 194:22–195:7.
28

1 Rodriguez Decl. Ex. 13 at 3:12–14 (same); Rodriguez Decl. Ex. 9 at 42:14–44:17 [REDACTED]
2 [REDACTED]
3 [REDACTED] Rodriguez Decl. Ex. 14 at 223:2–6 [REDACTED]
4 [REDACTED] *id.* at 206:5–11 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]; Rodriguez Decl. Ex. 11 at -603
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] Rodriguez Decl. Ex. 15 [REDACTED]
11 [REDACTED]
12 [REDACTED]; Rodriguez Decl. Ex. 16 at
13 217:9–21.

14 37. Oracle's **Interrogatory No. 20** asked Rimini *inter alia* to identify [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] Rodriguez Decl. Ex. 17 at 1.

18 38. Rimini responded in part by citing its [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] *Id.* at 6:25–7:10; *see also id.* at 4:9–27 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 39. Rimini's response to Oracle's Interrogatory No. 20 provided [REDACTED]
27 [REDACTED]
28

1 [REDACTED]
2 [REDACTED] ” *Id.* at 5:4–6:13; *see also* Rodriguez Decl. Ex. 9 at 156:8–15
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 40. Rimini [REDACTED]

8 [REDACTED] Rodriguez Decl. Ex. 17 at 5:4–6:13

9 [REDACTED] Rodriguez Decl. Ex. 9 at 165:24–166:4 [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 41. For the [REDACTED]

13 [REDACTED]
14 [REDACTED] Compare
15 Rodriguez Decl. Ex. 19 [REDACTED] with Rodriguez Decl. Ex. 17 at 5:4–6:13 [REDACTED]

16 42. Ms. Lyskawa testified that Rimini’s [REDACTED]

17 [REDACTED] Rodriguez Decl.

18 Ex. 9 at 144:21–145:3 [REDACTED]

19 [REDACTED]; *id.* at 140:13–18 [REDACTED] *id.* at 140:19–25

20 [REDACTED] *id.* at 141:1–9 ([REDACTED]

21 [REDACTED]; *id.* at 141:10–17 [REDACTED], 145:2–9 [REDACTED]

22 [REDACTED] *id.*
23 at 146:4–10 [REDACTED]

24 43. Oracle’s Letter [REDACTED]

25 [REDACTED] *Id.* at 149:16–

26 _____
27 ⁷ Rimini’s list names 44 customers, but numbers only 43 because there are two customers labeled
28 as “39.” Rodriguez Decl. Ex. 17 at 5:4–6:13.

1 21 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 44. Rimini admits [REDACTED]

6 [REDACTED] *Id.* at 151:21–152:3

7 (emphasis added); *see also id.* 53:8–25 [REDACTED]

8 [REDACTED]

9 [REDACTED]; *id.* at 167:16–19 [REDACTED]

10 [REDACTED]

11 [REDACTED]; Rodriguez Decl. Ex. 17 at 5–6.

12 45. [REDACTED]

13 [REDACTED] Rodriguez Decl. Ex. 21; Rodriguez

14 Decl. Ex. 16 at 240:9–22; Rodriguez Decl. Ex. 9 at 171:17–21 (“[REDACTED]

15 [REDACTED]

16 46. Rimini contends that the Letter [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 Rodriguez Decl. Ex. 17 at 6:15–17.

20 47. Rimini admits it is [REDACTED]

21 [REDACTED]

22 Rodriguez Decl. Ex. 9 at 164:10–165:8.

23 48. **Oracle’s Interrogatory No. 21** asked Rimini *inter alia* to [REDACTED]

24 [REDACTED]

25 [REDACTED]” Rodriguez

26 Ex. 17 at 7:17–20.

27 49. Rimini responded by [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] Rodriguez Ex. 17 at 9:6–12.
4 50. Rimini [REDACTED]
5 [REDACTED]
6 [REDACTED] Rodriguez Ex. 19; *see also*
7 Rodriguez Ex. 18 at 5:25–27.
8 51. **Oracle’s Interrogatory No. 22** asked Rimini *inter alia* to [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] Rodriguez Ex. 17 at 9:12–20.
12 52. Rimini responded by [REDACTED]
13 [REDACTED]. Rodriguez Ex. 17 at 11:1–3.
14 53. Rimini [REDACTED]
15 [REDACTED]
16 Rodriguez Ex. 23 ¶ 71 [REDACTED]
17 [REDACTED] *id.* ¶ 72 [REDACTED]
18 54. Rimini does not [REDACTED]
19 [REDACTED] (Rodriguez Ex. 18 at 5:25–27; Rodriguez Ex. 19 at 9–10), and [REDACTED]
20 [REDACTED]
21 [REDACTED] (Rodriguez Ex. 22 at D-1 p. 2; 4).⁸
22 **III. LEGAL STANDARD**
23 Summary judgment is warranted where there is “no genuine dispute as to any material
24 fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Lake at Las*
25 *Vegas Inv’rs Grp., Inc. v. Pac. Malibu Dev. Corp.*, 867 F. Supp. 920, 923 (D. Nev. 1994), *aff’d*, 78
26 _____
27 ⁸ Rimini lists [REDACTED]
28 Rodriguez Ex. 19 at 10; *see also* Rodriguez Ex. 18 at 5:25–27.
ORACLE’S MOTION FOR SUMMARY JUDGMENT & PARTIAL SUMMARY JUDGMENT
RE ORACLE’S CEASE-AND-DESIST LETTER

1 F.3d 593, 1996 WL 79482 (9th Cir. 1996). “Because the defendant does not bear the burden of
 2 proof at trial, the defendant need only point to the insufficiency of the plaintiff’s evidence to shift
 3 the burden to the plaintiff to raise genuine issues of fact as to each claim by substantial evidence.”
 4 *Indep. Cellular Tel., Inc. v. Daniels & Assocs.*, 863 F. Supp. 1109, 1113 (N.D. Cal. 1994)
 5 (“defendant’s motion for summary judgment faces a lighter burden”). A defendant meets its
 6 burden for summary judgment “(1) by presenting evidence to negate an essential element of the
 7 nonmoving party’s case; or (2) by demonstrating that the nonmoving party failed to make a
 8 showing sufficient to establish an element essential to that party’s case on which that party will
 9 bear the burden of proof at trial.” *Helper v. Ace Am. Ins. Co.*, 2014 WL 2960296, at *2 (D. Nev.
 10 June 27, 2014), *aff’d*, 650 F. App’x 357 (9th Cir. 2016) (granting defendant summary judgment
 11 on plaintiff’s claim for declaratory relief where there were no “questions of material fact that
 12 would require a trial”). “If the court does not grant all the relief requested by the motion, it may
 13 enter an order stating any material fact — including an item of damages or other relief — that is
 14 not genuinely in dispute and treating the fact as established in the case.” Fed. R. Civ. P. 56(g).

15 **IV. ORACLE IS ENTITLED TO SUMMARY JUDGMENT ON RIMINI’S
 16 DECLARATORY RELIEF CLAIM CONCERNING THE LETTER.**

17 In *Facebook*, the Ninth Circuit held that a defendant “can run afoul” of both the CFAA
 18 and CDAFA when it “has no permission to access a computer or when such permission has been
 19 revoked explicitly.⁹ Once permission has been revoked, technological gamesmanship or the
 20 enlisting of a third party to aid in access will not excuse liability.” *Facebook*, 844 F.3d at 1067.

21 ⁹ As the Court is aware, the CFAA “prohibits acts of computer trespass by those who are not
 22 authorized users or who exceed authorized use.” *Facebook*, 844 F.3d at 1065–66 *see also* 18
 23 U.S.C. § 1030(a)(2)(C) (covering one who “intentionally accesses a computer without
 24 authorization or exceeds authorized access, and thereby obtains . . . information from any protected
 25 computer”). California’s CDAFA and Nevada’s NCCL likewise protect and establish rights to be
 26 free of unwanted computer intrusions that are enforceable through private rights of action.
 27 California Penal Code § 502; N.R.S. § 205.4765; *Facebook*, 844 F.3d at 1069 (describing a
 28 “similar” analysis under both CFAA and CDAFA, and finding Power in violation of CDAFA(c)(2)
 because after receiving a cease-and-desist letter it “knowingly accessed and without permission
 took, copied, and made use of Facebook’s data”); *Ticketmaster L.L.C. v. Prestige Entm’t W., Inc.*,
 315 F. Supp. 3d 1147, 1174 (C.D. Cal. 2018) (“CDAFA is California’s state-law analogue to the
 CFAA.”). The NCCL prohibits similar conduct to that prohibited by CFAA and CDAFA. ECF
 No. 633 at 8 n.4.

1 Facebook confirmed that computer system owners can put a party on notice that it lacks
 2 authorization to access a computer system by sending the party a cease-and-desist letter. *Id.* That
 3 is precisely what Oracle did here by sending Rimini the Letter. SUF ¶ 27.

4 Rimini's Count II seeks a declaration that, notwithstanding the Letter, Rimini would not
 5 violate federal, California, or Nevada computer laws for "any access to, use of, or downloading
 6 from" Oracle's support websites "***authorized by Rimini's clients.***" Rimini TAC, ECF No. 489,
 7 ¶ 119 (emphasis added). At the pleading stage, the Court declined to dismiss Count II because
 8 Rimini "specifically pled that Oracle's software licenses specifically grant the licensee 'the right
 9 to access, download, and use the bug fixes, patches, and updates that Oracle makes available on
 10 its support websites'" and "has further alleged that the software licenses specifically allow the
 11 licensee to appoint an agent to access the support websites and execute downloads on the
 12 licensees' behalf." ECF No. 633 at 8–9.¹⁰ In other words, and in an apparent effort to distinguish
 13 *Facebook*, Rimini pled that Oracle licensees have an unfettered right (1) to access Oracle's
 14 websites and (2) to appoint any third party to act as their "agent" in exercising that alleged right.
 15 Those allegations are false as a matter of undisputed fact, and Oracle is now entitled to judgment
 16 on this claim.

17 As the Court observed in denying Oracle's motion to dismiss, the parties devoted only
 18 "minimal briefing" to these allegations at the pleading stage, including because only the pleadings
 19 were before the Court. *Id.* at 8–9. As a result, the Court found that "development of this claim -
 20 including the actual language of Oracle's software licenses and the extent of the licensee's
 21 authorization to Rimini Street - is necessary to properly evaluate this claim." *Id.* at 9.

22 Discovery has since completed, and—contrary to Rimini's pleading—Rimini has
 23 [REDACTED]

24 [REDACTED]

25 ¹⁰ See, e.g., Rimini TAC, ECF No. 489, ¶ 117 (Rimini "accesses the Oracle Websites as an
 26 appointed agent of Oracle's customers, pursuant to the authorization and permission granted to
 27 Rimini by those customers"); see also *id.* ¶ 80 ("The 'Rimini customer[s] . . . paid Oracle for the
 28 right to possess and use the support materials located on the Oracle Websites and for the right to
 access the websites—including by using third parties like Rimini.").

1 [REDACTED]. For example, during her testimony as Rimini’s corporate representative
 2 regarding the Letter, Ms. Lyskawa [REDACTED]
 3 [REDACTED]
 4 [REDACTED]

5 [REDACTED] SUF ¶¶ 29–33. [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]

9 [REDACTED]. SUF ¶¶ 1–14. Oracle is therefore entitled to summary judgment. *Celotex Corp. v. Catrett*,
 10 477 U.S. 317, 322 (1986) (“Rule 56(c) mandates the entry of summary judgment, after adequate
 11 time for discovery and upon motion, against a party who fails to make a showing sufficient to
 12 establish the existence of an element essential to that party’s case, and on which that party will
 13 bear the burden of proof at trial.”).

14 *Facebook* also rejected the same agency-based argument Rimini makes here: that
 15 subsequent third-party authorization allows otherwise forbidden access, explaining that the
 16 “consent that Power had received from Facebook users was *not sufficient* to grant continuing
 17 authorization to access Facebook’s computers after Facebook’s express revocation of
 18 permission.” *Facebook*, 844 F.3d at 1068 (emphasis added). Users’ authorization was not enough
 19 because the users could not supersede Facebook’s rights under both the CFAA and CDAFA to
 20 exclude Power from Facebook’s systems. *Id.* at 1069. Analogizing to a physical property right,
 21 the Ninth Circuit explained:

22 Suppose that a person wants to borrow a friend’s jewelry that is held in a safe
 23 deposit box at a bank. The friend gives permission for the person to access the
 24 safe deposit box and lends him a key. Upon receiving the key, though, the
 25 person decides to visit the bank while carrying a shotgun. The bank ejects the
 26 person from its premises and bans his reentry. The gun-toting jewelry borrower
 27 could not then reenter the bank, claiming that access to the safe deposit box
 28 gave him authority to stride about the bank’s property while armed. **In other words, to access the safe deposit box, the person needs permission both from his friend (who controls access to the safe) and from the bank (which controls access to its premises). Similarly, for Power to continue its campaign using Facebook’s computers, it needed authorization both from**

1 individual Facebook users (who controlled their data and personal pages)
2 and from Facebook (which stored this data on its physical servers).
3 Permission from the users alone was not sufficient to constitute
4 authorization after Facebook issued the cease and desist letter.

5 *Id.* (emphasis added).

6 In short, to access Oracle's support websites, Rimini needs permission *both* from a
7 customer (which controls access to its licensed Oracle software) *and* from Oracle (which controls
8 access to its support websites). Permission from Rimini's own customers alone is "not sufficient
9 to constitute authorization" after Oracle issued the Letter— [REDACTED]
[REDACTED]

10 *Id.* at 1067–69.¹¹ Therefore, any Rimini access of Oracle's support websites after March 17, 2017
11 is unauthorized and unlawful, and Oracle is entitled to summary judgment on Rimini's Count II.

12 **V. THE SAME UNDISPUTED FACTS DISPOSING OF COUNT II ENTITLE
13 ORACLE TO PARTIAL SUMMARY JUDGMENT ON RIMINI'S UNFAIR
14 COMPETITION AND INTENTIONAL INTERFERENCE CLAIMS TO THE
15 EXTENT THEY ARE BASED ON THE LETTER.**

16 The undisputed facts that necessitate summary judgment on Count II also entitle Oracle
17 to partial summary judgment on both Rimini's UCL and intentional interference claims (Counts
18 VIII and IV, respectively), to the extent those claims are based on the Letter. With respect to the
19 UCL, it is not "unfair" for Oracle to exercise computer access rights that the federal, California,
and Nevada Legislatures have all concluded should be protected. Nor can the exercise of those
rights amount to "improper" or "wrongful" interference.

20 **A. The UCL Permits Oracle To Exercise Its Statutory Rights Without Liability.**

21 As one theory of UCL liability in Count VIII, Rimini alleges that Oracle's "revocation of

22 _____
23 ¹¹ Facebook's "bank" reasoning follows from the basic legal principle that [REDACTED] *Swim v. Wilson*, 90 Cal. 126, 128 (1891)
24 ("the defendant, acting for [the principal] and as his agent, did not have any greater" property right
25 than his principal); *Berman v. Dean Witter & Co.*, 44 Cal. App. 3d 999, 1004 (1975) ("Jack on the
26 other hand is not entitled to any greater right than his principal Leona."). In addition, an agent
27 such as Rimini remains liable for conduct that violates a statute. Restatement (Third) Of Agency
§ 7.01, comment (c) (2006) ("When an agent's conduct violates a constitution, statute, regulation,
or ordinance, the agent is subject to liability although the agent acted at the principal's direction
or to further the principal's interests, unless the imposition of liability is inconsistent with the
constitution, statute, regulation, or ordinance.").

1 Rimini's access to the Oracle Websites and other conduct described above also constitutes an
 2 'unfair' business practice." Rimini TAC, ECF No. 489, ¶ 159. This theory fails because the UCL
 3 does not prohibit conduct as "unfair" if it is independently legal. Because Oracle's Letter was
 4 independently legal, including as a means to protect Oracle's rights under federal and state
 5 computer access statutes, it cannot be the basis for Rimini's UCL claim.

6 It is well recognized that a plaintiff cannot convert conduct "clearly permitted" by a statute
 7 into a UCL violation. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1164 (9th Cir. 2012)
 8 (treating motion to dismiss as one for summary judgment and affirming UCL judgment for
 9 defendant, quoting *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 182
 10 (1999)); *Alvarez v. Chevron Corp.*, 656 F.3d 925, 933 (9th Cir. 2011) ("California law
 11 unequivocally permits Defendants' conduct, therefore affording safe harbor from UCL
 12 liability."); *United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1048 (9th Cir. 2000); *Olszewski v.
 13 ScrippsHealth*, 107 Cal. Rptr. 2d 187, 203 (Cal. App. 2001), *aff'd in part in superseding opinion*
 14 *at* 30 Cal. 4th 798 (2003) ("Because the Legislature considered that activity and determined it to
 15 be lawful, we may not override that determination by permitting a UCL claim against a private
 16 party and deprive that private party of the safe harbor constructed by the Legislature.").
 17 Independent statutory rights do not "evaporate merely because the plaintiff discovers" that unfair
 18 competition may be "a conveniently different label" to attack the exercise of those rights. *Cel-
 19 Tech*, 20 Cal. 4th at 182; *see also Chavez v. Whirlpool Corp.*, 93 Cal. App. 4th 363, 375 (2001)
 20 ("if the conduct is deemed reasonable and condoned under the antitrust laws," courts will not find
 21 a violation of the "unfair" prong of Section 17200).

22 Oracle has federal and state statutory rights to control access to its servers. *See supra* n.9.
 23 Oracle's Letter to Rimini tracks the procedure approved by the Ninth Circuit for denying access
 24 to a computer system in order to assert claims under computer access statutes. Because Oracle's
 25 Letter is a recognized mechanism for asserting its statutory rights, that Letter cannot be the basis
 26 for a UCL "unfair" prong claim.

27 **B. The Letter Also Cannot Constitute "Wrongful" Or "Improper" Interference.**

1 Oracle also is entitled to summary judgment on Rimini’s theory of intentional interference
 2 with contractual relations based on the Letter (Count IV) because Oracle has an absolute right to
 3 exclude Rimini from its support websites. As this Court explained when deciding Oracle’s
 4 motion to dismiss:

5 Generally, there is no liability for causing a breach of contract where the breach
 6 is caused by the exercise of an absolute right, that is, an act which a person or
 7 entity has a definite legal right to engage in without any qualification. **An**
absolute right includes rights incident to ownership of property, rights
growing out of contractual relations, and the right to enter or refuse to
enter into contractual relations.

9 ECF No. 633 at 14–15 (citing 44B Am. Jur. 2d *Interference* § 22) (emphasis added). An absolute
 10 privilege may also attach if the challenged conduct complies with a statutory procedure. *Prappas*
 11 v. *Meyerland Cnty. Imp. Ass’n*, 795 S.W.2d 794, 796–98 (Tex. App. 1990), *writ denied* (Feb. 20,
 12 1991) (approving an absolute privilege “because specifically authorized by” a statute that served
 13 an important public “policy”; discussing California authorities); *see also Neal v. Select Portfolio*
 14 *Servicing, Inc.*, 2017 WL 4224871, at *4 (N.D. Cal. Sept. 22, 2017) (“...an intentional
 15 interference claim will not arise if the defendant’s conduct consists of something which he had
 16 an absolute right to do.”) (internal citations and quotation marks omitted)); *Dryden v. Tri-Valley*
 17 *Growers*, 65 Cal. App. 3d 990, 996 (Ct. App. 1977) (“[I]t is well settled that no actionable wrong
 18 is committed where, as here, the defendant’s conduct consists of something which he had an
 19 absolute right to do.”).

20 The Letter asserts Oracle’s absolute rights in at least three ways.

21 *First*, the rights asserted in the Letter asserted are “absolute” because they grow out of
 22 contractual relations: Oracle’s TOU [REDACTED] binding contracts that preserve
 23 Oracle’s right to revoke access, as explained above. The Letter cited those Terms of Use, SUF ¶
 24 25, making clear that Oracle asserts absolute rights. ECF No. 663 at 14 (“An absolute right
 25 includes . . . rights growing out of contractual relations”).

26 *Second*, the rights protected by the Letter are “absolute” because they are incident to
 27 property ownership. *Id.* (“An absolute right includes rights incident to ownership of

1 property”). Computer systems are physical property, and the right to control access to them is
 2 enforceable through an action for trespass to chattels. *Register.com v. Verio, Inc.*, 356 F.3d 393
 3 (2d Cir. 2004); *Intel v. Hamidi*, 30 Cal.4th 1342, 1356 (2003).

4 ***Third***, the Letter concerns Oracle’s absolute right to assert the protections of the cited
 5 computer access statutes. Those statutes serve policy goals so important that the federal, Nevada,
 6 and California Legislatures each created felony criminal liability for violators and simultaneously
 7 empowered private plaintiffs with a right of action. 18 U.S.C. 1030(e), 1030(c)(2)(B)(ii); Cal
 8 Penal Code. § 502(d)(1), 502(e)(1); N.R.S. § 205.4765-205.506, 205.511. Few rights could be
 9 more “absolute” than those enforceable by felony conviction. Cf. *Prappas*, 795 S.W.2d 794
 10 (discussing California authorities and approving an absolute privilege “because specifically
 11 authorized by statute” that served an important public “policy”); *Olszewski*, 107 Cal. Rptr. 2d
 12 187, 200-01 (absolute privilege applies to statements made when pursuing a statutorily authorized
 13 lien).

14 **VI. ADDITIONAL, INDEPENDENT REASONS REQUIRE SUMMARY JUDGMENT**
 15 **FOR ORACLE ON RIMINI’S LETTER-BASED CLAIM FOR INTENTIONAL**
 16 **INTERFERENCE WITH CONTRACTUAL RELATIONS.**

17 Although Rimini’s intentional interference claim fails based on Oracle’s “absolute” right
 18 to exclude, see Section V.B, it also fails because Rimini cannot prove (and in fact the evidence
 19 disproves) that Oracle disrupted any contractual obligation or harmed Rimini.

20 “In an action for intentional interference with contractual relations, a plaintiff must
 21 establish: (1) a valid and existing contract; (2) the defendant’s knowledge of the contract; (3)
 22 intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption
 23 of the contract; and (5) resulting damage.” *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274 (2003);
 24 see *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 825 (9th Cir.
 25 2008) (same). Summary judgment is proper where a plaintiff has not met its burden of adducing
 26 evidence that “that there has been actual disruption as a result of” the defendant’s activities, and
 27 that the plaintiff has “suffered damage as a result.” *Milton H. Greene Archives, Inc. v. CMG*

1 Worldwide, Inc., 2008 WL 11334030, at *20 (C.D. Cal. Mar. 17, 2008); *see also LucasArts Entm't Co. v. Humongous Entm't Co.*, 870 F. Supp. 285, 291, 1993 WL 760205 (N.D. Cal. 1993) (summary judgment where there is no evidence of "actual disruption" including "loss of time, money, goodwill, reputation and business opportunity"). Rimini lacks evidence that there has been any actual disruption of any contractual obligation—or any other cognizable harm.

6 **A. Rimini Cannot Prove That It Was Contractually Obligated To Access And
7 Download Materials From Oracle Websites.**

8 Contrary to Rimini's allegation that Oracle disrupted its "obligation" to "access the Oracle
9 Websites on behalf of Rimini's clients," Rimini cannot show that it had a valid and existing
10 contractual obligation to any Rimini customer to access and download from Oracle websites at
11 the time of the alleged interference.

12 As an initial matter, Rimini admits that [REDACTED]

13 [REDACTED]. SUF ¶¶ 39–40; ¶¶ 48–50.¹² As
14 a matter of law, [REDACTED] cannot be the subject of interference with contractual
15 relations because Rimini cannot satisfy the necessary element of an existing contract that
16 obligated Rimini to access Oracle's support websites. *O'Brien v. Morgan Stanley DW, Inc.*, 2008
17 WL 4224409, at *7 (D. Nev. Sept. 10, 2008) (summary judgment for defendants "because a valid
18 and existing contract held by the plaintiff is an essential element of a claim for intentional
19 interference with current contractual relationships"); *see also AirHawk Int'l, LLC v. TheRealCraigJ, LLC*, 2016 WL 9584008, at *6 (C.D. Cal. Aug. 1, 2016) (dismissing interference
20 with contractual relations where no contract "at the time of the interference"); *Montgomery v. eTreppid Techs., LLC*, No. 2008 WL 11401776, at *7 (D. Nev. July 2, 2008) (same).¹³

23

24 ¹² Rimini appears never to have [REDACTED]

SUF ¶ 50.

25

¹³ Rimini identified [REDACTED]

26

[REDACTED] SUF ¶¶ 51–54. [REDACTED] are missing the element of an
existing contractual obligation just as much as [REDACTED] with whom Rimini had no contract at the
time of the Letter because Rimini complains that the Letter prevented a new potential obligation,
not an existing obligation. *See Restatement (Second) Of Torts § 766B comments (c), (g).*

1 As for the [REDACTED], Rimini has not and cannot
 2 identify terms that obligate Rimini to access any Oracle support websites or to download Oracle
 3 support material for its customers. SUF ¶ 41; *see also id.* ¶¶ 37–38. By Rimini’s own admission,
 4 [REDACTED]
 5 [REDACTED] . *Id.* at ¶¶ 37–38 (emphasis added).
 6 Oracle is not aware of any customer suing Rimini for breach of any contractual provision as a
 7 result of the Letter, [REDACTED]
 8 [REDACTED] . *Id.* at ¶¶ 34; 36. And even today, with the Letter in force,
 9 Rimini “continues to advise its clients on the recommended scope of archives”; indeed, Rimini
 10 executives unanimously agree that [REDACTED]
 11 [REDACTED]
 12 [REDACTED] *Id.* at ¶ 36.

13 These undisputed facts warrant summary judgment in favor of Oracle on this claim as it
 14 relates to the Letter. *See Home Gambling Network, Inc. v. Piche*, 2013 WL 5492568, at *12 (D.
 15 Nev. Sept. 30, 2013), *aff’d*, 563 F. App’x 771 (Fed. Cir. 2014) (summary judgment for defendants
 16 on intentional interference with contractual relations where contract at issue did “not actually
 17 cover” the subject of the lawsuit); *Arkley v. Aon Risk Servs. Companies, Inc.*, 2012 WL 12885707,
 18 at *3 (C.D. Cal. June 13, 2012) (dismissing interference with contractual relations claim in part
 19 because of the lack of basis that the third parties to an alleged disrupted contract “were subject to
 20 contractual obligations that were disrupted”); *cf. Methodist Hosp. of S. California v. Blue Cross
 21 of California*, 2010 WL 11508022, at *8 (C.D. Cal. Feb. 26, 2010) (dismissing case where
 22 defendant could not have interfered with obligations that do not exist).

23 **B. Rimini Cannot Prove That Oracle’s Letter Caused Disruption.**

24 Rimini also cannot point to “specific facts showing that the actions taken by” Oracle
 25 “directly resulted in the disruption” of the contracts between Rimini and its customers.
 26 *Operation: Heroes, Ltd. v. Procter & Gamble Prods., Inc.*, 2015 WL 5768534, at *7 (D. Nev.
 27 Sept. 29, 2015) (summary judgment for defendant where plaintiff failed to cite any specific facts
 28

1 showing how the defendant interfered, or “how that interference directly resulted in the disruption
 2 of” the contract); *see also Stereoscope, LLC v. U.S. Bank Nat'l Ass'n*, 675 F. App'x 725, 726 (9th
 3 Cir. 2017) (dismissing interference claim for failure to plead causation, namely that “the contract
 4 would otherwise have been performed” but for the defendant’s conduct (internal citations and
 5 quotation marks omitted)); *Mossimo Holdings, LLC v. Haralambus*, 2017 WL 1240739, at *5
 6 (C.D. Cal. Apr. 4, 2017), *aff'd*, 2018 WL 3982334 (9th Cir. Aug. 21, 2018) (“The third element
 7 incorporates a causation requirement that the intentional acts be a substantial factor in causing the
 8 breach.”).

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] SUF ¶¶ 41–45; *see also id.* ¶ 53. [REDACTED]

12 [REDACTED]

13 [REDACTED] SUF ¶ 28.

14 Nor can Rimini show causation, as it was Rimini’s own conduct that caused any
 15 disruption. Rimini lacks evidence that the Letter—[REDACTED]
 16 [REDACTED].

17 *LucasArts Entm't*, 870 F. Supp. at 291 (summary judgment for plaintiff against defendant’s
 18 interference counterclaim where defendant “has yet to produce any evidence” identifying
 19 actionable disruption); *see also Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118,
 20 1129 (1990). Rimini’s **choice** to [REDACTED]

21 [REDACTED] is therefore equally fatal as a factual matter (SUF ¶¶ 40; 45; 53), as it
 22 is for the legal reasons explained in the last section. Moreover, Rimini’s own admissions indicate
 23 that [REDACTED]

24 *See, e.g.*, Rodriguez Decl. Ex. 9 at 166:9–19 [REDACTED]

25 [REDACTED]

26 [REDACTED] *id.* at 167:1–15 (Rimini [REDACTED])

27 [REDACTED] *id.* at 210:15–211:22 [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 [REDACTED] SUF ¶ 53 [REDACTED]
3 [REDACTED]

4 **C. Rimini Cannot Identify Cognizable Harm Or Damage.**

5 Finally, Rimini is unable to establish any cognizable harm from the Letter. *Sebastian*
6 *Int'l, Inc. v. Russolillo*, 2005 WL 1323127, at *10 (C.D. Cal. Feb. 22, 2005) (summary judgment
7 for defendant where “none of Plaintiff’s proffered evidence is sufficient to allow a reasonable
8 trier of fact to find that Plaintiff suffered damages as a result of Defendants’ alleged intentional
9 interference with Plaintiff’s contractual relations, or to establish the level of such damages beyond
10 mere speculation . . .”). The evidence indicates that Oracle’s Letter [REDACTED]

11 [REDACTED] SUF ¶ 35. Rimini admits that Oracle’s Letter, [REDACTED]
12 [REDACTED] SUF ¶¶ 35, 46–47. Rimini admits
13 it has not [REDACTED]
14 [REDACTED]
15 [REDACTED] SUF ¶ 34; *see Family*
16 *Home & Fin. Ctr.*, 525 F.3d at 825 (upholding summary judgment for defendant where plaintiff
17 did not produce evidence that defendant “influenced or caused” a third party to “terminate” its
18 contract with the plaintiff). By Rimini’s own admission, it was [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] SUF ¶¶ 44–45. And though Rimini claims it [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]. SUF ¶¶ 44–47.

25 **VII. SUMMARY JUDGMENT FOR ORACLE IS INDEPENDENTLY REQUIRED ON**
26 **RIMINI’S UCL CLAIM BASED ON THE LETTER.**

27 Rimini’s UCL claim based on the Letter also fails for an independent reason. Specifically,
28

1 Rimini lacks evidence sufficient to demonstrate that it lost money or property as a result of
 2 Oracle's alleged unfair competition. *Jane Doe I v. Wal-Mart Stores, Inc.*, 2007 WL 5975664, at
 3 *6 (C.D. Cal. Mar. 30, 2007) ("a private plaintiff under Section 17200 [the UCL] must be
 4 someone 'who has suffered injury in fact and has lost money or property as a result of such unfair
 5 competition.'" (quoting Cal. Bus. & Prof. Code § 17204)), *aff'd sub nom. Doe I v. Wal-Mart
 6 Stores, Inc.*, 572 F.3d 677 (9th Cir. 2009); *Linares v. CitiMortgage, Inc.*, No. C-14-3435 EMC,
 7 2015 WL 2088705, at *7 (N.D. Cal. May 5, 2015). Summary judgment under the UCL is proper
 8 where the plaintiff can identify no "particular instances" where customers were lost or when
 9 "there is nothing in the record demonstrating that the [challenged conduct] actually was
 10 responsible for any loss of money or property." *Fitbug Ltd. v. Fitbit, Inc.*, 78 F. Supp. 3d 1180,
 11 1197 (N.D. Cal. 2015) (summary judgment for defendant where the plaintiff could establish no
 12 "quantum of lost money or property"); *Express, LLC v. Fetish Grp., Inc.*, 464 F. Supp. 2d 965,
 13 980 (C.D. Cal. 2006) (summary judgment for defendant appropriate under the UCL where
 14 plaintiff made no non-speculative "showing of any harm or damages"). [REDACTED]

15 [REDACTED]
 16 [REDACTED] Rimini admits that [REDACTED]
 17 [REDACTED]

18 VIII. CONCLUSION

19 For these reasons, Oracle respectfully requests that the Court grant summary judgment in
 20 favor of Oracle on Count II in Rimini's Third Amended Complaint and partial summary judgment
 21 in favor of Oracle on Counts IV and VIII in Rimini's Third Amended Complaint as they relate to
 22 the Letter.

23 DATED: October 12, 2018

BOIES SCHILLER FLEXNER LLP

24

25

By: /s/ Richard J. Pocker

Richard J. Pocker

Attorneys for Defendants and Counterclaimants
 Oracle America, Inc. and Oracle International Corp.

26

1 **CERTIFICATE OF SERVICE**

2 I certify that on October 12, 2018, I electronically transmitted the foregoing **ORACLE'S**
3 **MOTION FOR SUMMARY JUDGMENT AND PARTIAL SUMMARY JUDGMENT AND**
4 **SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES REGARDING**
5 **ORACLE'S CEASE-AND-DESIST LETTER** to the Clerk's Office using the Electronic Filing
6 System pursuant to Local Rules Section 1C.

7 Dated: October 12, 2018

BOIES SCHILLER FLEXNER LLP

9 By: /s/ Ashleigh Jensen
10 Ashleigh Jensen